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IN THE

Supreme Court of the United States

OCTOBER TERM 1949

No. 410

RYAN STEVEDORING COMPANY, INC.,
Petitioner,

against

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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PETITION

Petitioner prays for a writ of certiorari to review a judgment of the United States Court of Appeals for the Second Circuit affirming a decree of the District Court for the Southern District of New York sustaining the exception of the United States to an impleading petition in an admiralty suit entitled Petterson Lighterage and Towing Corp., as managing owner of the derrick lighter Abbate, against Ryan Stevedoring Company, Inc., and Waterman Steamship Corporation, respondents; United States of America and E. I. Du Pont de Nemours and Company, Inc., respondents impleaded.

The decree of the Court of Appeals was entered on June 6, 1949 (R. 37); petitioner's application for a rehearing was filed on June 21, 1949 (R. 38), and was denied on July 22, 1949 (R. 42). Jurisdiction of this court is invoked under 28 U. S. Code §1254(1).

The District Court's opinion (R. 19) is reported in 1949 A.M.C. 753, and that of the Court of Appeals (R. 27) in 1949 A.M.C. 1363; 175 F. 2d 490.

Statement

On August 9, 1947, the managing owner of the lighter Abbate brought this suit against the petitioner and another to recover damages for injury done to the lighter by a fire that occurred on August 11, 1944, while the lighter was discharging her cargo of steel drums at Pier 4, Hoboken, where the petitioner was conducting stevedore operations. It was alleged among other things that the fire had been caused by the petitioner's negligence in allowing one of its chisel trucks to detonate some drums of high explosives on the pier, either by striking them or by creating sparks that caused them to explode (R. 3, 4).

On January 19, 1948, the petitioner impleaded the United States and another under the 56th Admiralty Rule, claiming a right of indemnity in respect of any liability that the petitioner might sustain to the libelant (R. 9).

In substance the petitioner alleged that at the time of the fire the petitioner was working at the pier under a contract with the United States and was engaged in handling a lot of metal drums marked "kolloxiline" that were owned by the United States and had been transported by it on a lighter to the pier, and in part placed upon the pier, for shipment to Russia on a steamship owned and operated by the United States and then lying at the pier, and that certain of the drums had been laden on the steamer (R. 11, 12). [The drums were in fact those described in the libel

as the cargo of the lighter Abbate, and were being discharged from the lighter for transit across the pier to the steamer but they were not so distinctly described in the impleading petition. There was no dispute on that point, however, and it was not material to the decision below, but in applying for a rehearing the petitioner unsuccessfully sought leave to clarify the matter by an amendment (R. 39, 40).]

It was alleged in the impleading petition that the drums in question contained nitrocellulose, but that they were not marked or labeled to give notice of their contents to the petitioner or its employees, and that the drums were not tight; also that the nitrocellulose contained in the drums had so deteriorated as to become unstable and unfit for ordinary handling, and that the United States, as owner and shipper of the cargo, was at fault for those conditions and moreover had failed to comply with the laws and regulations relating to the shipment of explosive or inflammable goods (R. 12-15).

The petitioner alleged that the fire started in or near those drums, the contents of which ignited or exploded, spreading the fire beyond control; that the resulting damage was not attributable to any active or affirmative negligence on the part of the petitioner, and that if the libelant should recover against the petitioner, the latter should be indemnified by the United States (R. 13-16).

The right of indemnity was alleged to be based on one or another of three statutes, the Suits in Admiralty Act (46 U. S. Code §741 et seq.), the Federal Tort Claims Act (28 U. S. Code §1346-b) or the Tucker Act. (The claim under the Tucker Act will not be pressed here.)

On the exception of the United States the impleading petition was dismissed (Clancy, *D.J.*, R. 19) and on appeal the dismissal was affirmed (Clark, *C. J.*, writing with the concurrence of Judges Chase and Dobie, R. 27).

The Decisions Below

Referring to the Suits in Admiralty Act, the district court held that liability thereunder arising from the government's ownership of cargo must be "directly connected with the government's ownership and operation of a vessel", and also that only claims for transportation charges on such cargo "could intelligently have been intended to be included" (R. 20).

The Court of Appeals disagreed with the latter observation, but affirmed the view that the liability of the government as a cargo owner must be "directly connected with the government's ownership and operation of a vessel" (R. 32).

In reaching that conclusion the Court of Appeals recognized that cargo may perhaps be regarded as "an active cause of harm", and also that the Suits in Admiralty Act created something more than a substitute for a proceeding in rem; but the court deemed its conclusion to be supported collaterally by the proviso in §742 "that such vessel is employed as a merchant vessel", and by the further provision in the same section as to the place of suit. On the last mentioned point the Court of Appeals cited a district court decision that the provision is jurisdictional, although this court's later decision in *Hoiness* v. *United States*, 335 U. S. 297, 302, would seem to indicate the contrary (R. 33).

Finally, the Court of Appeals mentioned, the Suits in Admiralty Act, as supplemented by the Public Vessels Act, does not admit the suggestion that the government's "immunity is to be waived in essentially every case which can be brought in the admiralty" (R. 33). In that respect, the court found the earlier acts to be incomparable to the Federal Tort Claims Act.

It had been suggested by the district court that the impleading petition might well state a case under the Federal Tort Claims Act if it were not outlawed by the express language of that statute (R. 19). The Court of Appeals agreed, in the following language (R. 35):

> "The Federal Tort Claims Act, enacted August 2, 1946, seems clearly inapplicable. It grants a remedy on 'any claim against the United States, for money only, accruing on and after January 1, 1945, on account of damage to or loss of property or on account of personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government,' etc. 28 U. S. C. A. §931, now restated in §1346(b). Hence liability exists only for torts committed on or after January 1, 1945. *Niagara Fire Ins. Co.* v. *United States*, D. C. S. D. N. Y., 76 F. Supp. 850, 853, 854. Moreover, suit must be brought within one year after either the date of accrual of the claim or August 2, 1946, whichever is later, 28 U. S. C. A. §942, now §2401; *Sweet* v. *United States*, D. C. S. D. Cal., 71 F. Supp. 863. A later accruing claim for indemnity because of an earlier tort would seem not freed from that bar."

A similar problem was briefly considered by the Court of Appeals in discussing the question whether, if the Suits in Admiralty Act were applicable, the petitioner's right of

indemnity or contribution would be barred by the two-year limitation contained in Section 5 of that Act (46 U. S. Code §745). The court cited its decision in *Esso Standard Oil Co. v. United States*, 174 F. 2d 182, which will be referred to again later, as authority against the petitioner, but noted that this ground was not relied on by the district judge and was not necessary to the appellate court's decision (R. 35).

The Questions Presented

1. Under the Suits in Admiralty Act, is the liability of the United States as the owner of cargo confined to cases in which the asserted liability is "directly connected with the Government's ownership and operation of a vessel"?

2. Where a proceeding in admiralty would be maintainable against a private person in like circumstances, does the Suits in Admiralty Act authorize a libel against the United States upon the allegations that it was the owner of cargo which it transported by lighter to a pier for shipment on a steamer alongside, owned and operated by the United States, and that after some of the cargo had been so laden, but before all had been discharged from the lighter, the part intermediately on the pier ignited or exploded by reason of its dangerous and concealed unfitness for ordinary handling, for which condition the United States, as owner and shipper, was at fault?

3. If otherwise maintainable under the Suits in Admiralty Act, is the petitioner's claim for maritime-law indemnity or contribution barred by the provision of sec-

tion 5 (28 U. S. Code §745) that "suits hereunder shall be brought within two years after the cause of action arises"?

4. If the petitioner's claim for indemnity or contribution is not maintainable under the Suits in Admiralty Act, is the claim maintainable under the Federal Tort Claims Act, it appearing that the maritime tort occurred prior to January 1, 1945, but that the petitioner's claim for indemnity or contribution did not accrue until after that date?

Reasons for Granting Petition

It is manifest that the questions presented are of general importance to the administration of the Suits in Admiralty Act and the Federal Tort Claims Act.

With respect to the Suits in Admiralty Act, the Court of Appeals noted that it presents "interesting and novel problems as applied to the circumstances of this case", and added (R. 31):

> "It is perhaps strange that, although the remainder of this statute has been extensively litigated, there seems almost no litigation, and certainly no decision, dealing with the meaning of *cargo* in this connection. But we apprehend that it will be found as difficult as the remaining portions have already proved to be".

There is no question that the impleading petition is maintainable either under the Suits in Admiralty Act or under the Federal Tort Claims Act unless those Acts require the application of a special and unique rule for determining the time when a maritime cause of action for indem-

nity or contribution arises or accrues against the United States.

The proposition that a maritime claim for indemnity or contribution does not "arise" or "accrue" before the claimant has suffered loss, is amply sustained by decisions of this court and by those cited at R. 34.

In *Erie Railroad Co.* v. *Erie and Western Transportation Co.*, 204 U. S. 220, it was contended that a claim for indemnity or contribution by one shipowner against another in respect of what the former had been obligated to pay a third party was barred by the judgment in former litigation between the two shipowners involving their liability to each other for injury to their respective vessels. In rejecting that contention, Mr. Justice Holmes took pains to point out that the right to indemnity or contribution in respect of a subsequent liability to a third person was necessarily a separable right. Noting that the pleadings in the former suit did not open the claim for indemnity, he said at page 227:

> "They could not have done so, because at that stage the petitioner not having paid, it had no claim for indemnity, but only for exoneration. It was not bound to adopt the procedure permitted to it by Rule 59."

In *The Ira M. Hedges*, 218 U. S. 264, the same justice made the same point. He mentioned that although the libel in terms alleged a claim to recover the full amount for which the claimant had been held liable, nevertheless the pleading might be held as substantially claiming the right to recover either the whole of what the claimant had expended or contribution on account of such payment. It was

emphasized that the right to contribution in such a case belongs to the substantive law of the admiralty and is not a mere incident of a form of procedure.

In denying the application here of the established rule that a claim for indemnity accrues, for the purpose of limitation, only when the claimant has been subjected to liability, the Court of Appeals cited a recent decision of its own, in which, however, the proposition was rendered entirely moot by the disposition which the court made of that case on another ground, whereby the timeliness of the claim for contributions was fully sustained (*Esso Standard Oil Co.* v. *United States*, 174 F. 2d 182, at 186).

In *American Stevedores, Inc.* v. *Porello*, 330 U. S. 446, 453; it was noted that the several Acts of Congress herein referred to, of general application, have attested to the growing feeling of Congress that the United States should waive its sovereignty in tort cases.

Section 3 of the Suits in Admiralty Act provides that suits thereunder "shall proceed and shall be heard and determined according to the principles of law and to the rules of practice obtaining in like cases between private parties"; and the Tort Claims Act (28 U. S. Code §1346-b) provides for an action on a claim for money damages "accruing on and after January 1, 1945", for loss of property "under circumstances where the United States, if a private person, would be liable to the claimant * * * ".

In the light of those provisions there is no evident reason why a claim under either of those Acts should be treated as arising or accruing at any time different from the time when a claim of the same sort would be held to arise or accrue against a private party.

Conclusion

It is respectfully submitted that this case, involving the construction of two remedial statutes of the United States, each of wide application, both very narrowly interpreted with doubtful correctness by the courts below, abundantly warrants the attention of this honorable court.

JOHN C. CRAWLEY,
Counsel for Petitioner.

APPENDIX

Material provisions of the Suits in Admiralty Act, 46 U. S. Code.

"§741. Exemption of United States vessels and *cargoes* from arrest or seizure

No vessel owned by the United States or by any corporation in which the United States or its representative shall own the entire outstanding capital stock or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no **cargo** owned or possessed by the United States or by such corporation, shall, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process in the United States or its possessions: Provided, That this chapter shall not apply to the Panama Railroad Company."

"§742. Libel in personam

In cases where if such vessel were privately owned or operated, or if such **cargo** were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel in personam may be brought against the United States or against any corporation mentioned in section 741 of this title, as the case may be, provided that such vessel is employed as a merchant vessel or is a tugboat operated by such corporation. Such suits shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the vessel or **cargo** charged with liability is found. * * * "

"§743. Procedure in cases of libel in personam

Such suits shall proceed and shall be heard and determined according to the principles of law and to the rules of practice obtaining in like cases between private parties. * * * If the libelant so elects in his libel, the suit may proceed in accordance with the principles of libels in rem wherever it shall appear that had the vessel or cargo been privately owned and possessed a libel in rem might have been maintained. Election so to proceed shall not preclude the libelant in any proper case from seeking relief in personam in the same suit. * * * "

"§744. Release of privately owned vessel after seizure * * * ."

"§745. Causes of action for which suits may be brought; limitations; exceptions; actions which may not be revived; interest on claims

Suits * * * hereunder shall be brought within two years after the cause of action arises: * * * ."

Material provisions of Federal Tort Claims Act. 28 U. S. Code, as amended April 25, 1949.

Federal Tort Claims Act. 28 U. S. Code

"§1346. United States as defendant

* * *

(b) Subject to the provisions of chapter 171 of this title, the district courts * * * shall have exclusive jurisdiction of civil actions on claims against the United States, for

money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred."

"§2401 (b) A tort claim against the United States shall be forever barred unless action is begun within two years after such claim accrues or within one year after the date of enactment of this amendatory sentence, whichever is later, • • • ."

"Chapter 171 Tort Claims Procedure

"§2680. Exceptions

The provisions of this chapter and section 1346 (b) of this title shall not apply to—

• • •

(d) Any claim for which a remedy is provided by sections 741-752, 781-790 of Title 46, relating to claims or suits in admiralty against the United States."

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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 410

RYAN STEVEDORING COMPANY, INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the United States District Court for the Southern District of New York (R. 19-20) is reported at 1949 A. M. C. 753. The opinion of the United States Court of Appeals for the Second Circuit (R. 27-36) is reported at 175 F. 2d 490.

JURISDICTION

The judgment of the Court of Appeals was entered June 6, 1949 (R. 37). A petition for rehearing was denied July 22, 1949 (R. 41). A petition for a writ of certiorari was filed October 20, 1949. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether an impleading petition in admiralty may be brought against the United States under the Suits in Admiralty Act in respect of government-owned cargo in every case where "if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained" (46 U. S. C. 742) or whether it is also necessary that liability be "directly connected with the Government's ownership and operation of a vessel"; if so,

2. Whether, more than two years having elapsed since the occurrence of the damage out of which the cause of action arose, the filing of an impleading petition in admiralty is barred by the requirement of the Suits in Admiralty Act that suit "shall be brought within two years after the cause of action arises" (46 U. S. C. 745).

3. Whether in the special circumstances of the present case the Tort Claims Act confers jurisdiction of an impleading petition in admiralty based upon a maritime tort which occurred prior to January 1, 1945.

STATEMENT

This claim of indemnity by petitioner against the United States arises out of the explosion on the pier end at Hoboken, New Jersey, on August 11, 1944, of certain government cargo. The cargo was in the course of being first discharged onto the pier from lighters, which were bringing it from the rail terminal, and then reloaded aboard a government vessel which would carry it to Russia. Petitioner, the stevedore engaged in transferring the government cargo, seeks review of the decision of both lower courts that there is no jurisdiction under the Suits in Admiralty Act (46 U. S. C. 741 *et seq.*) of an impleading petition for damage caused by government cargo unless liability is "directly connected with the Government's ownership and operation of a vessel" (see R. 20, 32). Petitioner further urges that if there is no jurisdiction under the Suits in Admiralty Act, jurisdiction should be found under the Tort Claims Act (28 U. S. C. 1346(b)). Summarized from the pleadings, the facts, so far as pertinent, follow.

On August 9, 1947, just under three years after the damage, which occurred on August 11, 1944, Petterson Lighterage and Towing Corporation, as owner of the Derrick Lighter *Abbate,* filed a libel against petitioner and another in a cause of "loss and damage, civil and maritime" (R. 2-6). The libel charged petitioner with negligently causing a fire on the pier which spread and damaged the Derrick Lighter *Abbate,* as a result of peti-

tioner's agents and employees having "carelessly permitted and caused a chisel truck which they were operating on said pier to collide with a number of metal drums containing cargo of a highly explosive nature" (R. 3). Damages were claimed in the amount of $7,000 (R. 5).

Five months later, on January 19, 1948, or almost three and a half years after the damage, petitioner answered the libel, denying negligence and damage (R. 7-8), and filed an impleading petition against the United States and another (R. 9-16). The impleading petition invoked the jurisdiction of the district court under the Suits in Admiralty Act, the Tucker Act, and the Tort Claims Act (R. 9-10). The petition charged the United States with negligence, *inter alia,* in that the drums of cargo were not marked or labelled as required by applicable law and regulations "so as to give notice to petitioner and its employees of the explosive or inflammable nature of the contents of said drums" (R. 15). Other specifications of negligence included failure properly to care for the drums and their contents prior to their shipment as a result of which they became dangerous to handle (R. 14-15).

The United States filed exceptions to the impleading petition on the grounds, *first,* that it appeared from the face of the petition that more than two years had elapsed since the alleged cause of action arose, and *second,* that the facts alleged failed to state a cause of action under either the Suits in Admiralty, Tucker or Tort Claims Acts

(R. 17). The district court sustained the Government's exceptions and dismissed the impleading petition (R. 21).

The district court in holding that petitioner's claim was not one within the terms of the Suits in Admiralty Act stated, "we have been compelled to the conclusion as was the Court in *American President Lines* v. *United States,* 75 F. Supp. 110, that the liability arising from the Government's ownership of cargo is directly connected with the Government's ownership and operation of a vessel." Moreover, it continued, "Cargo is normally understood to be merchandise carried by a vessel and that carriage can hardly be said to begin before the loading operation starts" (R. 20). The Tort Claims and Tucker Acts, the district court held, were equally unavailing in the particular circumstances alleged in the libel (R. 19, 20).

On appeal, the court below affirmed. Like the district court, it held the Suits in Admiralty Act inapplicable. It conceded that the statutory language taken alone would "seem to assume a liability in cargo equal to, or coordinate with, that of a vessel" (R. 32). But it continued, "Nevertheless, we agree with the district judge upon the ground which he actually chooses, that the liability referred to in the statute as arising from the government's ownership of cargo must be one 'directly connected with the Government's ownership and operation of a vessel' * * * And the drums on the pier, even if about to be loaded upon

a vessel, cannot be considered cargo in any real sense having to do with navigation of government vessels" (R. 32, 34).

The court below referred to the Government's contention that, in any case, the impleading petition having been filed three and a half years after the damage occurred was not "brought within two years after the cause of action arises" as required by the Suits in Admiralty Act (46 U.S.C. 745). It agreed that "an impleading petition should be dismissed where the bar of the statute obtains" but added "This ground was not, however, relied on by the district judge and is not necessary to our present decision" (R. 35).

The court below held the Tort Claims and Tucker Acts inapplicable. Under the Tort Claims Act, the court said, "liability exists only for torts committed on or after January 1, 1945" and hence "a later accruing claim for indemnity because of an earlier tort would seem not freed from that bar" (R. 35). Any cause of action for contractual indemnity under the Tucker Act, the court found too highly speculative to afford a ground of suit at this time and added "Should liability become more imminent, impleader may then be sought" (R. 36).

ARGUMENT

We believe that the first question presented (see *supra,* p. 2) is appropriate for consideration and decision by this Court, but that the other questions

are neither ripe for determination nor properly presented in the current posture of this case.

1. Admittedly, as petitioner points out, between private parties there would be admiralty jurisdiction of the impleading petition which the lower courts dismissed. And this Court has established that the broad purpose of the Suits in Admiralty Act as supplemented and amended by the Public Vessels Act was to impose on the United States the same liability (apart from seizure or arrest under a libel *in rem*) as is imposed by the admiralty law on private parties. See *Canadian Aviator* v. *United States,* 324 U. S. 215, 228. In dismissing petitioner's impleading petition because the liability asserted is not one "directly connected with the Government's ownership and operation of a vessel", the lower courts appear to have erred in attempting to add to the statutory requirements for jurisdiction already imposed by Congress a further condition justified by neither the terms nor the policy of the Suits in Admiralty Act.

The statute commands that "no cargo owned or possessed by the United States * * * shall, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process" (46 U.S.C. 741). It creates a plain right of suit "In cases where * * * if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained" (46 U.S.C. 742).

It provides that suit shall be brought in the district "in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the * * * cargo charged with liability is found" (*ibid.*). It authorizes proceedings in rem "wherever it shall appear that had the * * * cargo been privately owned and possessed a libel in rem might have been maintained" (46 U.S.C. 743). Nowhere is there any requirement that liability be connected with ownership and operation of a vessel, for the statutory purpose was to deal with liability of government cargo whether transported on private or government vessels.

The question is plainly a matter of substantial public importance which should be settled by decision of this Court. Prior to the decision of *American President Lines* v. *United States*, 75 F. Supp. 110, 112 (S.D. N.Y.), relied on by both lower courts, it had been the accepted practice, in view of the literal language of the statute, that in respect of both torts and contracts, the Suits in Admiralty Act furnishes the proper remedy against the United States on all maritime causes of action arising out of the ownership and possession of cargo no less than from the possession and operation of merchant vessels.[1] It has long been

[1] In fact, the result but not the opinion of the *American President Lines* case appears to have been correct. That was an action in the nature of *indebitatus assumpsit* to recover back the amount deducted by the Comptroller General in

established by statute and decision of this Court that the remedy under the Suits in Admiralty Act, where available, is exclusive of that under either the Tucker Act or the Tort Claims Act. The Tucker Act is held to have been repealed to the extent of the admiralty remedy by section 13 of the Suits in Admiralty Act (41 Stat. 525). *United States Fleet Corp.* v. *Rosenberg Bros.*, 276 U. S. 202, 213; *Matson Navigation Co.* v. *United States*, 284 U. S. 352, 356-357. The Tort Claims Act contains an express exception of such cases (sec. 421(d), 60 Stat. 845; now 28 U.S.C. 2680(d)). It is thus imperative that the doubt created by the decision below as to the appropriate remedy in cases involving government cargo should be promptly clarified.

The availability of the Suits in Admiralty Act remedy is one constantly presented in government admiralty litigation. Suits for freight, general average and salvage of government-owned cargo and for damage done by government cargo to the vessels and cargo of others are frequent as a result of the Government's shipment of cargo on

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making payment of the plaintiff's freight bills on account of certain cross claims by the Government against the carrier. Actually, it was not a suit for the freight money which had already been allowed by the Comptroller. Rather it was a suit to recover back the amount, which the Comptroller had withheld and deposited to the credit of the Government's cross claim, on the ground that such cross claim was invalid and the amount was therefore held by the Government to the carrier's use. Such actions are not of admiralty or maritime jurisdiction. Cf. *Silva* v. *Bankers Commercial Corp.*, 163 F. 2d 602, 604 (C. A. 2).

privately operated vessels. In time of peace, with government cargo being more and more transported by private vessels, the issue is of increasing importance. If the United States cannot be joined in libels or brought in by impleading petitions in litigation arising out of maritime causes of action but separate civil actions must be filed under the Tort Claims Act or Tucker Act, both the United States and the other parties involved will be unnecessarily subjected to inconveniences. In these circumstances we do not oppose the granting of the writ to review this question and to determine to what extent, and in what manner, the provisions of the Suits in Admiralty Act are exclusive.

2. Petitioner contends that the impleading petition is not barred by the two-year limitation provision of the Suits in Admiralty Act (46 U. S. C. 745) unless that Act requires "the application of a special and unique rule for determining the time when a maritime cause of action for indemnity or contribution arises or accrues against the United States" (Pet. 7-8). The court below referred to this contention but expressly declined to rule thereon in the absence of a decision of the point by the district court (R. 35). For the same reason it is believed this Court should not undertake to pass upon it. Although the pleadings present the bare facts of the date the damage occurred, the date petitioner was sued, and the date the impleading petition was filed, nothing indicates whether petitioner,

at the time of the fire, suffered other direct damage to which the present claim of indemnity or contribution is but incidental or when petitioner first learned of libelant's intention to hold petitioner liable for its damage. Questions of limitations are not always decidable on exceptions or motion to dismiss. It would seem preferable to have the evidence sifted, the facts initially found, and any questions of laches decided by the district court. Such issues of law as may then survive can be decided, in ordinary course, in the light of the actual circumstances.

3. Petitioner's last question, concerning the possibility of jurisdiction under the Tort Claims Act in the event jurisdiction is not conferred by the Suits in Admiralty Act, likewise appears not to merit review. We believe that both courts below correctly rejected petitioner's claim of Tort Claims Act jurisdiction. That Act grants the district courts jurisdiction only of *civil actions* against the United States on claims accruing after January 1, 1945 (sec. 410(a), 411; now 28 U. S. C. 1346(b), 2401(b)). Here the tort occurred August 11, 1944 and this is a proceeding in admiralty, not a civil action.

Nothing in the language of the Act or in its legislative history indicates that it was intended to authorize *impleading petitions in admiralty proceedings* whereby the United States became an additional respondent with petitioner in a libel brought

against it by libelant after the expiration of the two-year limitation period within which libelant itself could have sued the United States in admiralty. On the contrary, it was expressly stated by the House Judiciary Committee that it was not intended to permit the United States to be joined with any person as a defendant or lift its immunity except as specifically stated.[2]

Moreover, the Act covers only causes of action sounding in tort, and nothing indicates a Congressional intent to extend jurisdiction to quasi-contractual claims for restitution which are implied in law. *Oahu Ry. & Land Co.* v. *United States,* 73 F. Supp. 707 (D. Hawaii); *Drummond* v. *United States,* 78 F. Supp. 730, 731 (E.D. Va.). If petitioner's alleged right under the Tort Claims Act can rest on a claim to indemnity or contribution rather than on the tort, as it suggests, then it has until April 25, 1950, to maintain a separate suit thereon(Act of April 25, 1949, c. 92, P. L. 55, 81st Cong., amending 28 U. S. C. 2401(b)). If, as it

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[2] H. Rep. No. 2245, 77th Cong., 2d Sess., p. 9: "It is intended that the district courts in exercising jurisdiction under this title shall exercise essentially the same type of jurisdiction as district courts exercise concurrently with the Court of Claims of the United States under the Tucker Act * * *. The bill therefore does not permit any person to be joined as a defendant with the United States and does not lift the immunity of the United States from tort actions except as jurisdiction is specifically conferred upon the district courts by this bill. See *United States* v. *Sherwood,* 312 U.S. 584 (1941); *Lynn* v. *United States,* 110 F. 2d 586, 588 (C.A. 5, 1940); *Waite* v. *United States,* 57 C. Cls. 546 (1922); *Jackson* v. *United States,* 27 C. Cls. 74, 84 (1891)". See also H. Rep. 1287, 79th Cong., 1st Sess.

asserts, its has no cause of action until it pays libelant or until final decree is entered against it on the libel herein, its claim obviously will not be barred by limitations even then.

CONCLUSION

For the reasons stated, the United States does not oppose the granting of the writ of certiorari. It is respectfully submitted, however, that the writ, if granted, should be limited to a review of the first question.

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